

**United States Department of Labor
Employees' Compensation Appeals Board**

J.S., Appellant

and

**SOCIAL SECURITY ADMINISTRATION,
FIELD OFFICE, West Palm Beach, FL,
Employer**

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**Docket No. 13-1174
Issued: July 29, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 17, 2013 appellant filed a timely appeal of a March 11, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an occupational disease while in the performance of duty.

FACTUAL HISTORY

On November 29, 2012 appellant, then a 50-year-old claims representative, filed an occupational disease claim alleging that he was exposed to a chemical odor on November 16,

¹ 5 U.S.C. § 8101 *et seq.*

2012 and thereafter experienced dizziness, cracked lips, eye irritation, mouth soreness, diarrhea, and heart symptoms.² In a February 6, 2013 letter, OWCP informed him that additional evidence was needed to establish his claim and afforded him 30 days to submit a factual statement detailing the purported exposure and a report from a qualified physician explaining how this event caused or contributed to a diagnosed condition.

Appellant detailed in a March 8, 2013 statement that he experienced rashes and respiratory ailments since 2009 due to mold exposure in the workplace. His symptoms worsened on November 16, 2012 when an exterminator sprayed insecticide throughout the building and a maintenance crew used chemical agents to clean the carpet. Because of the ensuing odor, the office was temporarily closed and employees were redeployed to other sites.³

Various reports for the period April 17 to August 3, 2009 from Dr. Mirta R. Galante, a Board-certified internist, indicated that appellant was treated for respiratory symptoms. In a January 14, 2013 report, Dr. Galante advised that appellant be removed from areas with mold to avoid exacerbation of his allergies and asthma.⁴

By decision dated March 11, 2013, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that the accepted exposure caused or contributed to a diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

² Appellant provided personnel medical leave slips for the period November 18 to December 27, 2012. Each request was granted by a supervisor.

³ Appellant reiterated this account in a "Notice of Alleged Safety or Health Hazards" form dated December 18, 2012. He also submitted two comprehensive site inspection reports. First, a September 8, 2009 evaluation conducted by an environmental scientist confirmed mold growth on various surfaces and dispersal *via* the heating, ventilation and air conditioning system. Second, a February 20, 2013 evaluation performed by an industrial hygienist revealed mold on air handler unit coils and in the restrooms, hallways, and closets, disconnected supply air ducts, airborne spores and debris in work areas and inadequate prior remediation efforts, *inter alia*.

⁴ The case record also contains a photocopy of a prescription note. However, due to a secure watermark, it is largely illegible.

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁷ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁸

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS

The Board finds that appellant did not establish that he sustained an occupational disease while in the performance of duty. Although OWCP accepted that he was exposed to mold, insecticide spray, and cleaning chemicals in the workplace, the medical evidence did not sufficiently demonstrate that this exposure caused or contributed to a diagnosed condition. While various reports from Dr. Galante from April 17, 2009 to January 14, 2013 indicated that appellant had preexisting respiratory symptoms that may be exacerbated by mold exposure, she failed to address whether a diagnosed injury resulted from the November 16, 2012 chemical exposure that he specifically alleged. Therefore, without a diagnosis or opinion of how his employment-related exposure caused or aggravated the claimed condition, Dr. Galante's reports offered diminished probative value on the issue of causal relationship.¹⁰ In the absence of rationalized medical opinion evidence, appellant failed to discharge his burden of proof.

Appellant may submit new evidence or argument as part of a formal written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish that he sustained an occupational disease while in the performance of duty.

⁷ See *S.P.*, 59 ECAB 184, 188 (2007).

⁸ See *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁹ *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 6.

¹⁰ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the March 11, 2013 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 29, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board